WP(C) 8713/2005
BEFORE
THE HON'BLE MR JUSTICE HRISHIKESH ROY
JUDGMENT AND ORDER (ORAL)

Heard Mr M U Mahmud, learned counsel appearing for the petitioner. Also heard Mr G Soren, learned Government Advocate, appearing for the respondent Nos 1, 2 & 3.

2. Although it is revealed from the Office Note dated 12.10.2006 that service on the private respondent No 4 is complete, she has not appeared and participated in the present proceeding.

3. The petitioner who was appointed as a Sister Tutor by appointment order dated 26.9.1987 is before the Court challenging the order of promotion to the post of Matron given to respondent No 4 on 31.10.2005 and also a further order dated 17.11.2005 directing the respondent No 4 to take over the charge of the post of In charge Principal of the School of Nursing under Silchar Medical College (for short, 'SMC') from the writ petitioner.

The petitioner is also seeking a direction for promotion to the post of Matron prior to respondent No 4 and for further direction to enable her to continue as In charge Principal, to which post she was posted on 2.1.2003.

4. Mr M U Mahmud, learned counsel appearing for the petitioner submits that the writ petitioner was appointed to the teaching post of Sister Tutor on 26.9.1987 whereas the respondent No 4 was appointed to the teaching post of Sister Tutor on 10.7.2003 about 16 (Sixteen) years after the writ petitioner.

5. It is further contended that while considering the Sister Tutors for promotion to the post of Matron, the eligibility criteria is laid down through an Executive Guideline specified for appointment to the post of Principal which post is equivalent to the post of Matron. According to the Guideline, 6 (six) years minimum teaching experience is needed for an M.Sc Nursing Degree Holder and 8 (Eight) years minimum teaching experience is required for a B.Sc Degree Holder for being considered for promotion. It is accordingly, contended that as the writ petitioner is a B.Sc Degree Holder and the respondent No 4 is an M.Sc Degree Holder, they were required to fulfill the minimum years of service as Sister Tutors before they could be considered for promotion to the post of Matron which is equivalent to the post of Principal.

6. Mr Mahmud further submits that as respondent No 4 was promoted to the post of Sister Tutor on 10.7.2003, by the time her case was considered for promotion to the post of Matron and the impugned promotion order dated 31.10.2005 was issued promoting the respondent No 4 to the post of Matron, she had not completed the requirement of 6 (six) years of service in the post of Sister Tutor prescribed for an M.Sc Degree Holder to make her eligible for being considered for promotion to the post of Matron.

7. It is further contended that the petitioner has been serving in the post of Sister Tutor since 26.9.1987 and only during the pendency of this writ petition, the petitioner has been given promotion to the post of Principal Nursing Officer, which is a post equivalent to the post of Matron w.e.f. 29.3.2007. It is contended that the promotion of the petitioner must relate back to the time when her juniors in the shape of respondent No 4 was promoted to the post of Matron.

8. The learned counsel has also drawn attention of the Court to the Seniority List of Sister Tutors/ PHN etc. which was considered by the respondent authorities at the time of making promotion to the post of Matron. In the said

gradation list, the name of the petitioner appears at Serial No 23 showing her date of joining to the post of Sister Tutor on 6.10.1987 whereas in the said gradation list, the name of respondent No 4 appears at Serial No 44 showing (wrongly) her date of joining to the post of Sister Tutor as 28.11.1982.

By referring to the said Seniority List, the learned counsel for the petitioner submits that the respondent No 4 although was promoted to the post of Sister Tutor only on 10.7.2003 she is shown to have been considered working in the post of Sister Tutor as far back as on 29.11.1982 on which date she was appointed as a Staff Nurse only. It is pointed out that post of Staff Nurse is a post, lower than the post of Sister Tutor.

9. On the basis of the claim of seniority as well as on the basis of contentions raised regarding disqualification of the respondent No 4 to be considered for promotion, the learned counsel for the petitioner has prayed for the relief of setting aside the order of promotion given to respondent No 4 as well as for consideration of her case from the retrospective date of promotion of her junior.

10. Mr G Soren, learned G.A. Assam, has submitted that the promotion of respondent No 4 has been made on the basis of recommendation of the Selection Committee DPC considering the fact that the respondent No 4 was the only M.Sc Nursing Degree holder in the entire State.

However, the learned G.A., Assam could not specifically explain as to how the respondent No 4 could have been considered eligible for promotion to the post of Matron, although she had not completed the minimum 6 (six) years of service in the post of Sister Tutor at the time of considering her case of promotion to the post of Matron.

11. I have given my anxious consideration to the submissions made by the learned counsel appearing for both the parties. In the absence of service rules it is submitted by both the counsels appearing for the parties that the Guideline appended as Annexures to the Rejoinder affidavit dated 14.6.2007 filed on behalf of the Government, covers the field in the absence of the rules for making promotion to the post of Matron.

12. From examination of the norms prescribed in the Guideline, it is apparent that even for an M.Sc Degree Holder minimum 6 (six) years experience is needed as Sister Tutor for being considered for promotion to the higher post. The respondent No 4 does not possess the minimum 6 (six) years of teaching experience as she was promoted to the post of Sister Tutor only on 16.2.2004. Accordingly, I am constrained to hold that as the respondent No 4 do not possess the minimum qualification, she should not have been considered for promotion to the post of Matron. Accordingly, the impugned order dated 31.10.2005 (Annexure 6) is held to be unsustainable in law and the same is hereby set aside and quashed.

13. It appears that the writ petitioner has since been promoted to the higher post by order-dated 23.3.2007. As regards her further prayer for getting promotion to the post from the retrospective date i.e. the date of promotion of the Juniors, I direct the respondent authorities to accordingly consider the case of the petitioner along with other eligible persons in the grade of Sister Tutor and as the writ petitioner has been working as Sister Tutor from 26.9.1987. Her case should be considered by the respondent authorities to relate back her promotion from an earlier date, when she should have been considered and given the promotion to the higher post of Matron/Principal Nursing Officer.

14. With the aforesaid directions, the writ petition is allowed to t

he extent indicated above.